143

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

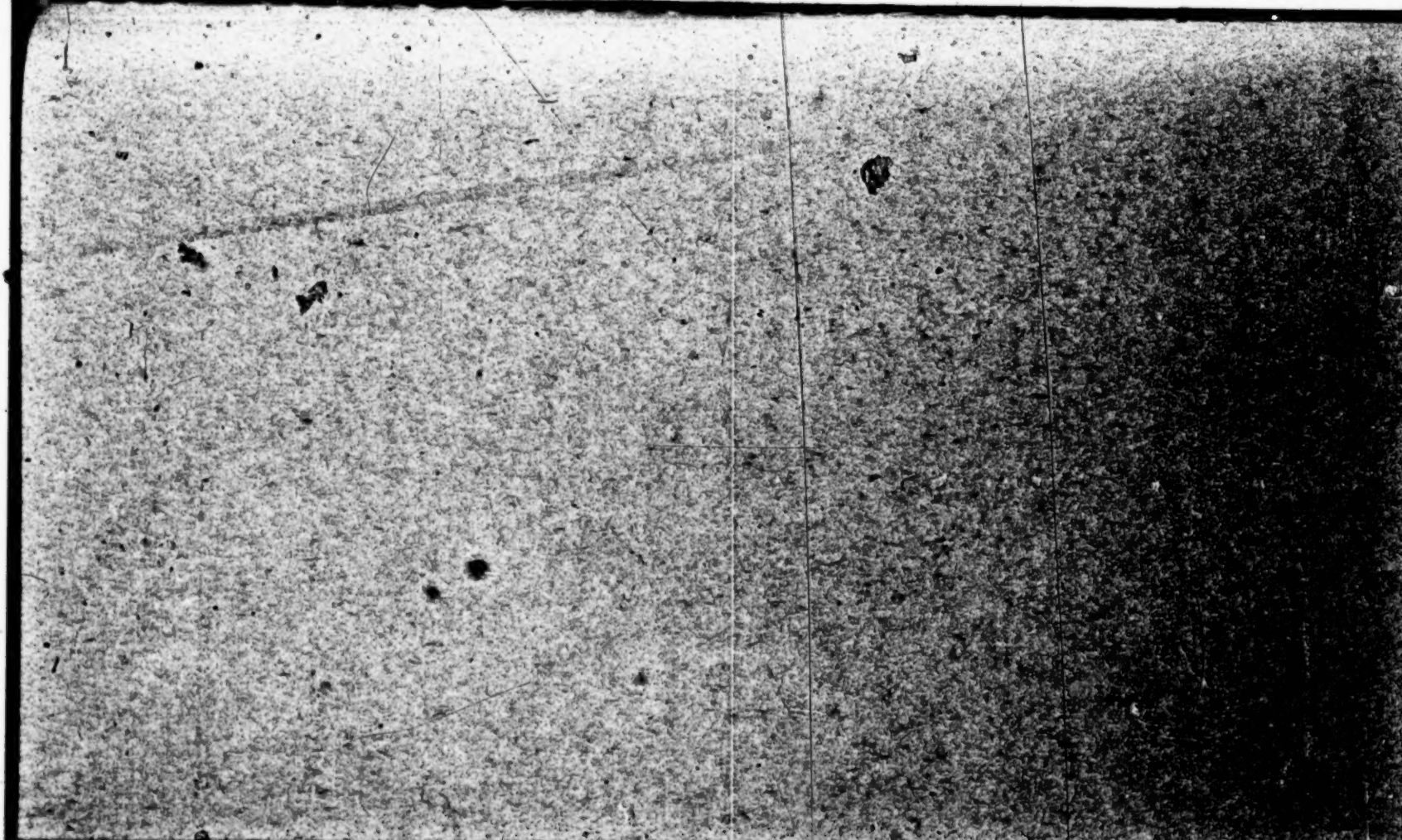
No. 549

L. G. LAWRENCE, GUARDIAN OF HARRY NEWSOME, INCOMPETENT, PETITIONER,

vs.

JOHN A. SHAW AND OTHERS, MEMBERS OF AND CONSTITUTING THE BOARD OF COMMISSIONERS OF HERTFORD COUNTY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.



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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 9, 1937.

[fol. 1]

IN SUPREME COURT OF NORTH CAROLINA, THIRD DISTRICT

SPRING TERM, 1936

No. 172

L. J. LAWRENCE, Guardian of Harry Newsome, Incompetent,

v.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, B. N. Sykes, J. M. Eley and T. W. Sears, Constituting and Composing the Board of Commissioners of Hertford County; and John A. Northcott, County Accountant of Said Hertford County

Before Cranmer, J., April 4th, 1936, Hertford Superior Court—Plaintiff Appealed

IN SUPERIOR COURT OF HERTFORD COUNTY

AGREEMENT OF COUNSEL AS TO SUBMISSION WITHOUT ORAL ARGUMENT

It is hereby agreed, in the above entitled action by consent of the plaintiff and defendants, that the said action is to be, and is hereby, submitted to the Supreme Court without oral argument, upon printed briefs, under Rule 10 of the Rules of Practice in the Supreme Court.

This April 8th, 1936.

L. J. Lawrence, In Propria Persona, Attorney for Plaintiff. W. D. Boone, Attorney for Defendants.

IN SUPERIOR COURT OF HERTFORD COUNTY

Case Agreed in a Controversy Submitted Without Action

Plaintiff and defendants, having a controversy which they wish determined without action, submit the following [fol. 2] Case Agreed to His Honor, E. H. Cranmer, Judge holding the Courts of the Third Judicial District.

Statement of Facts

Plaintiff and defendants each state the facts involved are as follows, to-wit:

1. That the plaintiff was duly appointed by and qualified before the Clerk of the Superior Court of Hertford County on or about May 16th, 1929, as guardian of Harry Newsome, incompetent, a Veteran of the World War, and the said plaintiff has ever since been, and is now, the duly appointed and acting guardian of said veteran.

2. That John A. Shaw, W. C. Ferguson, C. T. Whitley, B. N. Sykes, J. M. Eley and T. W. Sears are the individuals and members constituting and composing the Board of Commissioners of said Hertford County.

3. That John A. Northcott is the duly appointed, elected and acting County Accountant and fiscal agent of said Hertford County, charged by law and by virtue of his said office, with the duties of setting up and keeping records of all tax levies made by said Board of Commissioners; of all obligations due to and by said County, keeping books and records of all receipts and disbursements of public moneys of said County, and of receiving, accounting for and paying out, upon orders of said Board, all tax and public moneys belonging to said Hertford County; and the said Northcott is also Register of Deeds of said Hertford County and Ex-Officio Clerk to the defendant Board of Commissioners, and was such Register and Clerk at the times hereinafter mentioned.

4. That at the time of the appointment and qualification of the plaintiff as guardian aforesaid, the said Harry Newsome, incompetent and veteran as aforesaid, owned no property or estate, other than claims against the United States Government for unpaid compensation and insurance due said veteran for services rendered said Government.

5. That on the 1st day of April, 1931, the said plaintiff had to his credit, as deposits in banks, the amount of $5,- [fol. 3] 787.72, and in his name as guardian aforesaid; all of which represented, and, in fact, were the proceeds of collection made from deposits by said guardian of the original warrants or checks issued by the said Government in payment to said veteran of compensation and insurance

due the said veteran by the said Government; and on the said 1st day of April, said guardian also was in possession of certain interest bearing notes and bonds, payable to said guardian and containing definite dates of maturity and repayment, not exceeding 12 months from date of execution of each respective note or bond, secured by conveyances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $13,390.28; the whole of which notes, bonds and conveyances were executed by the makers thereof as evidence of loans made by the said guardian from proceeds collected as aforesaid from said United States Government in payment of compensation and insurance due said veteran.

6. That on the 1st day of April, 1932, the said guardian had to his credit, as deposits in banks, the amount of $3,868.42, and in his name as Guardian aforesaid, all of which represented, and, in fact, were the proceeds of collection from deposits made by said guardian of the original warrants or checks issued by the said Government in payment to said veteran of compensation and insurance due the said veteran by the said Government; and on the said 1st day of April, 1932, said guardian was also in possession of certain interest bearing notes and bonds, payable to said guardian, containing definite and fixed dates of maturity and repayment, as stated in paragraph 5 hereof, which were secured by conve ances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $17,157.58; the whole, of which notes and bonds and conveyances were executed by the makers thereof as evidences of loans made by the said guardian from proceeds collected from said U. S. Government in payment of compensation and insurance due the said veteran.

7. That on the 1st day of April, 1933, the said guardian [fol. 4] had to his credit, as deposits in banks, the amount of $3704.76, and in his name as guardian aforesaid, all of which represented, and, in fact, were the proceeds of collection made from deposits by said guardian of the original warrants or checks issued by said Government in payment to said veteran of compensation and insurance due the said veteran by the said Government; and on the said 1st day of April, 1933, said guardian was also in possession of certain interest bearing notes and bonds, payable

to said guardian and containing fixed and definite dates of maturity and repayment, as aforesaid, secured by conveyances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $18,528.24; the whole of which notes and bonds and conveyances were executed by the makers thereof as evidences and security for loans made by said guardian from the proceeds collected from said U. S. Government in payment of compensation and insurance due the said veteran.

8. That on the 1st day of April, 1934, the said guardian had to his credit, as deposits in banks, the amount of $987.48, and in his name as guardian aforesaid, all of which represented, and, in fact, were the proceeds of collection from deposits made by said guardian of the original warrants or checks issued by said Government in payment to said veteran of compensation and insurance due the said veteran by the said Government; and on the said 1st day of April, 1934, said guardian was also in possession of certain interest bearing notes and bonds, payable to said guardian, containing definite and fixed dates of maturity and repayment, as aforesaid, which were secured by conveyances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $18,217.52; the whole of which notes, bonds and conveyances, were executed by the makers thereof as evidences of and security for loans made by said guardian from proceeds collected from said U. S. Government in payment of compensation and insurance due the said veteran.

[fol. 5] 9. That on the 1st day of April, 1935, the said guardian had to his credit, as deposits in banks, the amount of $2,730.93, and in his name as guardian aforesaid, all of which represented, and, in fact, were the proceeds of collection from deposits made by said guardian of the original warrants or checks issued by said Government in payment to said veteran of compensation and insurance due the said veteran by the said Government; and on the said 1st day of April, 1935, said guardian was also in possession of certain interest bearing notes and bonds, payable to said guardian, containing definite and fixed dates of maturity and repayment, as aforesaid, and secured by conveyances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $13,636.07; the whole of which notes

and bonds, notes and conveyances, were executed by the makers thereof as evidences of and security for loans made by said guardian from proceeds collected from said U. S. Government in payment of compensation and insurance due the said veteran.

10. That on the said 1st days of April, 1931, 1932, 1933, 1934 and 1935, neither the said veteran nor the plaintiff, as guardian aforesaid, owned any real estate in said Hertford County.

11. That prior thereto, to-wit, in the year 1930, the said veteran became the owner of an automobile, and certain other personal property, the whole of which has been regularly and yearly listed for taxation, and the taxes due thereon have been duly and regularly paid.

12. That in the said year 1930, the said guardian listed for taxation, in said Hertford County, the total property in his possession as guardian aforesaid owned by said ward, in the aggregate amount of $20,380.92, made up and including money in banks, solvent credits, and loans secured by real estate conveyances as aforesaid, and in said year paid the taxes thereon.

13. That thereafter, and during the year 1931, the plaintiff being informed that a ruling had been made and an [fol. 6] opinion given by the Attorney General of North Carolina, that funds received by a guardian of a World War Veteran, as payments of adjusted compensation or insurance from the Federal Government, and invested by the guardian in either a home or in real estate notes, were not subject to taxation, appeared before the defendant Board of Commissioners made known to said defendants the ruling and opinion aforesaid, and requested the said Board to reimburse and refund to plaintiff the full amount of said 1931 taxes, and to relieve and discharge the plaintiff from the whole of said taxes.

14. That said Board of Commissioners, pursuant to said information and request, made an order at the time aforesaid, directing repayment and refund to the plaintiff of the whole of said taxes, and thereafter paid to plaintiff the whole thereof.

15. That in consequence of the opinion and ruling aforesaid, and in consequence of the order made by said Board

of Commissioners, the plaintiff in neither of the years 1931, 1932, 1933, 1934 nor 1935, further listed any property of said veteran in possession of the plaintiff, for taxation in said Hertford County, and has for neither of said years, except as hereinafter set out, paid to said Hertford County any taxes thereon.

16. That during the year 1935, to-wit, on or about the — day of October, of said year, the defendant Board of County Commissioners, acting by and through its said County Accountant, under due authority from said Board of Commissioners, caused to be set up, listed and assessed as taxable property of the said Harry Newsome, all moneys received by the plaintiff from said U. S. Government as compensation and insurance due the said veteran, and all notes and bonds held and possessed by said Guardian, as loans made by him from said compensation and insurance payments; and for each of the said years 1931, 1932, 1933, 1934 and 1935, assessed the said property and made levies [fol. 7] thereon of taxes in favor of said County, according to the regular rates theretofore determined for each of said years, as follows, to-wit:

Property	Assessed Value	Tax Rate	Taxes
1931			
Deposits in Bank	5,787.72	1.43	82.90
Solvent credits—Real Estate Loans	13,390.28	1.43	191.47
Totals for 1931	$19,188.00	1.43	$274.37
1932			
Deposits in banks	3,868.42	1.59	61.51
Solvent credits—Real Estate Loans	17,157.58	1.59	272.79
Totals for 1932	$21,026.00	1.59	$334.30
1933			
Deposits in banks	3,704.76	1.52	56.31
Solvent credits—Real Estate Loans	18,528.24	1.52	281.62
Totals for 1933	$22,233.00	1.52	$337.93
1934			
Deposits in banks	987.48	1.44	14.22
Solvent credits—Real Estate Loans	18,217.52	1.44	262.54
Totals for 1934	$19,205.00	1.44	$276.54
1935			
Deposits in banks	2,730.93	1.54	41.95
Solvent credits—Real Estate Loans	13,636.07	1.54	210.10
Totals for 1935	$16,367.00	1.54	$252.05

17. That the said taxes so assessed and levied by said Commissioners, for the years aforesaid, amounted in the [fol. 8] aggregate to the sum total of $1475.19, the payment of which was demanded by the said defendants, by notice in writing, addressed to the plaintiff. A copy of said notice and demands is hereto attached, marked "Exhibit A", and made a part of this Case Agreed.

18. That each of the said items set out and shown in paragraph 16 as "Deposits in Banks", for each of said years, represented and, in fact, were the collections from warrants or checks drawn and issued by the United States Government in payment of Compensation and Insurance due by it to plaintiff's ward, which said warrants or checks were deposited by plaintiff in such depositories and credited by them in the plaintiff's account as guardian aforesaid; and the amounts of said assessments and levies made up by said defendants on the items aforesaid, and shown in said paragraph, represented and were, in fact, the unexpended and uninvested balances in the hands of the said guardian of payments aforesaid by the U. S. Government, of warrants or checks issued by it for compensation and insurance due by it to the said veteran.

And the said items set out and shown in said paragraph 16, as "Solvent Credits—Real Estate Loans", represented and, in fact, were the assessed value of notes and bonds secured by conveyances of real estate, executed and delivered and made payable to said guardian, as evidences of and security for loans made by said guardian to the makers thereof, out of the proceeds derived from said compensation and insurance warrants or checks.

19. That the said assessments and levies of taxes for each of the said years 1931, 1932, 1933, 1934 and 1935, set out and shown in said paragraph 16, as "Deposits in Banks" and as "Solvent Credits—Real Estate Loans", were made up by said defendants in the year 1935, subsequent to the general levy of taxes of said year 1935, and subsequent to the month of July of said year, upon admissions made by the plaintiff, in a private conversation with [fol. 9] the Attorney for said defendants, and the said John A. Northcott, that the same were correct sums total of money on deposit in banks and of real estate loans due to and in favor of plaintiff on April 1st of each of said years;

but the said assessments and levies were made in the absence of plaintiff, without his consent, and without notice to show cause, if any he had, why the order made by said defendants as aforesaid in 1931, should not be revoked, or why the said property should not be assessed for taxation.

20. That on the 9th day of October, 1935, pursuant to the said written demands by the said defendants of the plaintiff, for payment of the taxes aforesaid, the said plaintiff, although protesting, in writing, the payment thereof, paid over to said defendants the full amount of taxes so assessed and levied for each of said years, aggregating the sum total of $1475.19, and obtained from said defendants a receipt, in writing, showing both the payment thereof and protest aforesaid.

21. That thereafter, to-wit, on October 10th, 1935, the said plaintiff made demands of said defendants, in writing, for reimbursement, repayment and return of the full amount of said $1475.19 so paid by plaintiff to defendants, upon the grounds and for the reason that the taxes aforesaid were unlawfully and wrongfully exacted of the plaintiff, and that the said assessments under which the said levies were made, were without warrant of law, illegal and void; which demands the said defendants refused, and the said defendants have failed and refused to reimburse, repay or refund to plaintiff any part thereof, and still refuse reimbursement or repayment of the whole and every part thereof.

QUESTIONS SUBMITTED TO THE COURT, UPON THE CASE AGREED

1. Where a guardian of a World War Veteran receives from the Veterans' Bureau of the United States Government, warrants or checks issued by such Government in payment of adjusted compensation or insurance due the [fol. 10] guardian's ward, and such warrants or checks are deposited by the guardian in a depository, collected by it, and the proceeds are credited in the guardian's account carried in such depository, are such deposits subject to taxation by county or municipal authorities?

2. Where such guardian carries in bank an account in his name as guardian of a World War Veteran, consisting

and made up of deposits therein of compensation or insurance warrants or checks issued and delivered by the U. S. Government; and such guardian thereafter draws upon his said account in making loans on real estate security, accepts notes and bonds as evidences of the loan, and deeds of trust as security therefor, and all such notes and bonds are made payable to the said guardian, containing maturities of twelve months, or less, and each and all of such notes and bonds are held and retained by the guardian as assets due his said ward, are such notes and bonds the subject of taxation by county and municipal authorities?

3. Where a Board of County Commissioners, pursuant to a ruling and opinion made and given by the Attorney General of the State, holding as non-taxable all proceeds from compensation and insurance warrants or checks issued by the U. S. Government to veterans of the World War, releases and relieves a guardian of a World War Veteran from payment of taxes assessed on money carried in banks and real estate loans, the whole of which being derived from compensation and insurance payments, can such Board of Commissioners thereafter and subsequent to their order aforesaid cause assessment and levy of taxes to be made on the same character of property discharged and released by its former order, without notice to or the consent of such guardian?

4. Where a Board of County Commissioners, pursuant to and in accordance with a ruling of the Attorney General, made an order in 1931, releasing and discharging the plaintiff from payment of 1930 taxes on certain property held [fol. 11] by such ruling to be exempt from taxation, can such board of commissioners in the year 1935, subsequent to the general tax levy made in such year, and subsequent to the month of July in such year, without notice to, consent of, or waiver by the tax payer, set up, assess and levy taxes on the property aforesaid for the year 1935, and for the four years next preceding such year?

AGREEMENT AS TO JUDGMENT

It is agreed that Judgment shall be entered in this case in accordance with the opinion rendered.

L. J. Lawrence, Guardian of Harry Newsome. W. D. Boone, Attorney for Defendants.

L. J. Lawrence, being duly sworn, says that the controversy above set out is a real one, and that this proceeding is instituted in good faith to determine the respective rights of the parties thereto.

L. J. Lawrence.

Subscribed and sworn to before me, this the 17 day of February, 1936. Alvah Early, Clerk Superior Court.

John A. Northcott, being duly sworn, says that he is one of the defendants named in the foregoing action; that the controversy hereinbefore set out is a real one, and that this proceeding is instituted in good faith to determine the rights of the respective parties thereto.

J. A. Northcott, County Accountant.

Subscribed and sworn to before me, this the 17 day of February, 1936. Alvah Early, Clerk Superior Court.

[fol. 12] EXHIBIT "A"

Taxes L. J. Lawrence, Guardian, Harry Newsome

Year 1931

Valuation	Tax Rates		State Taxes	Co. Taxes	Spl. Taxes Dist	Total Taxes
$19,188	State	.16				
	Co.	.85				
	Dist.	.42				
		1.43	30.70	163.09	80.58	274.37

Year 1932

$21,026	State	.16	33.64	187.13	113.53	334.30
	Co.	.89				
	Dist.	.54				
		1.59				

Year 1933

$22,233	Co.	.96				
	Dists.	.56		213.44	124.49	337.93
		1.52				

Year 1934

$19,205	Co.	.90				
	Dist.	.54		172.84	103.70	276.54
		1.44				

Year 1935

$16,367	Co.	1.00				
	Dists.	.54		163.67	88.38	252.05
		1.54				

Total $1475.19

NORTH CAROLINA,
Hertford County:

To L. J. Lawrence, Guardian, Harry Newsome Estate:

The above taxes levied against you as Guardian of above estate. Please let us have check covering the total amount.

John A. Northcott, County Accountant, Hertford Co., N. C., and Clerk Board County Commissioners.

[fol. 13] IN SUPERIOR COURT OF HERTFORD COUNTY

JUDGMENT

This cause coming on to be heard, as a case agreed in a controversy submitted without action, before the undersigned Judge presiding over the Courts of the Third Judicial District, and the same being heard;

Now, after argument of counsel for plaintiff and defendants, and upon a consideration of the case agreed, the Court is of the opinion that the deposits in Bank and notes and bonds as set forth in the case agreed are subject to taxation, and that the $1,475.19 taxes paid by plaintiff was and is due to Hertford County for the years 1931, 1932, 1933, 1934 and 1935:

It is, thereupon ordered, adjudged and decreed that the plaintiff recover nothing of the defendants and that he pay the costs taxed by the Clerk.

By agreement of counsel, this judgment is signed out of term and out of the County and at Jackson, North Carolina.

This the 4th day of April, 1936.

E. H. Cranmer, Judge Presiding over the Courts of 3rd Judicial District.

APPEAL ENTRIES

To the foregoing judgment plaintiff excepts in open Court and appeals to the Supreme Court; further notice waived. Appeal bond fixed at $100. Statement of case agreed and this judgment shall constitute statement of case on appeal.

Cranmer, Judge.

IN SUPERIOR COURT OF HERTFORD COUNTY

ASSIGNMENT OF ERROR

The only exception was to the judgment as signed.

RECITAL AS TO BOND

Appeal Bond in sum of $100.00, appears in the original transcript of record.

(Transcript Certified by Clerk Superior Court.)

A true copy. Edward Murray, Clerk of the Supreme Court of North Carolina.

[fol. 14] IN SUPREME COURT OF NORTH CAROLINA, SPRING TERM, 1936

No. 172. Hertford

L. J. LAWRENCE, Guardian of Harry Newsome, Incompetent,

vs.

JOHN A. SHAW, and Others, Members of and Constituting the Board of Commissioners of Hertford County, and John A. Northcott, County Accountant of Hertford County

Appeal by Plaintiff from Cranmer, J., at April Term, 1936, of the Superior Court of Hertford County. Affirmed.

OPINION

This is a controversy without action. C. S. 626.

It is agreed: "1. That the plaintiff was duly appointed by and qualified before the Clerk of the Superior Court of Hertford County, on or about 16 May, 1929, as guardian of Harry Newsome, incompetent veteran of the World War, and has ever since been and is now the duly appointed and acting guardian of said veteran.

2. That John A. Shaw, W. C. Ferguson, C. T. Whitley, B. N. Sykes, J. M. Eley and T. W. Sears are members of and constitute the Board of Commissioners of Hertford County, North Carolina.

3. That John A. Northcott is the duly appointed, elected and acting County Accountant and fiscal agent of Hertford County, and is charged by law, by virtue of his office, with the duties of setting up and keeping records of all tax levies made by said Board of Commissioners, of all obligations due to and by said County, keeping books and records of all receipts and disbursements of public monies of said county, and of receiving, accounting for and paying out, upon orders of said Board, all tax and public monies belonging to said Hertford County; and that the said John A. Northcott is also Register of Deeds of Hertford County and ex officio Clerk to the Defendant Board of Commissioners, and was such Register and Clerk at the times hereinafter mentioned.

4. That at the time of the appointment and qualification of the plaintiff as guardian aforesaid, the said Harry Newsome, incompetent veteran as aforesaid, owned no property or estate, other than claims against the United States Gov- [fol. 15] ernment for unpaid compensation and insurance due said veteran for services rendered said Government.

5. That on the first day of April, 1931, the plaintiff had to his credit, as deposits in banks, the amount of $5,787.72, in his name as guardian aforesaid; all of which represented, and in fact were the proceeds of collections made from deposits by said guardian of the original warrants or checks issued by said Government in payment to said veteran of compensation and insurance due the said veteran by the said Government; and on the said first day of April, 1931, said guardian also was in possession of certain interest bearing notes and bonds, payable to said guardian and containing definite dates of maturity and re-payment, not exceeding twelve months from the date of the execution of each respective note or bond, secured by conveyances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $13,390.28; the whole of which notes, bonds and conveyances were executed by the makers thereof as evidences of and security for loans made by the said guardian from proceeds collected as aforesaid from said United

States Government in payment of compensation and insurance due said veteran.

6. That on the first day of April, 1932, the said guardian had to his credit, as deposits in banks, the amount of $3,868.42, in his name as guardian aforesaid; all of which represented and in fact were the proceeds of collections from deposits made by said guardian of the original warrants or checks issued by the said Government in payment to said veteran or compensation and insurance due the said veteran by the said Government; and on the said first day of April, 1932, said guardian was also in possession of certain interest bearing notes and bonds, payable to said guardian, containing definite and fixed dates of maturity and re-payment, as stated in paragraph 5 hereof, which were secured by conveyances of real estate, in trust for the purposes aforesaid, in the aggregate amount of $17,157.58; the whole of which notes and bonds and conveyances were executed by the makers thereof as evidences of and security for loans made by the said guardian from proceeds collected from said U. S. Government in payment of compensation and insurance due the said veteran.

7. That on the first day of April 1933, the said guardian [fol. 16] had to his credit, as deposits in banks, the amount $987.48, in his name as guardian aforesaid; all of which represented, and in fact were the proceeds of collections made from deposits by said guardian of the original warrants of checks issued by said Government in payment to said veteran of compensation and insurance due the said veteran by the said Government; and on the said first day of April, 1933, said guardian was also in possession of certain interest bearing notes and bonds, payable to said guardian and containing fixed and definite dates of maturity and re-payment, as aforesaid, secured by conveyances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $18,528.24; the whole of which notes and bonds and conveyances were executed by the makers thereof as evidences of and security for loans made by said guardian from the proceeds collected from said U. S. Government in payment of compensation and insurance due the said veteran.

8. That on the first day of April, 1934, the said guardian had to his credit, as deposits in banks, the amount of

$987.48, in his name as guardian aforesaid; all of which represented and in fact were the proceeds of collections from deposits made by said guardian of the original warrants of checks issued by said Government in payment to said veteran of compensation and insurance due the said veteran by the said Government; and on the said first day of April, 1934, said guardian was also in possession of certain interest bearing notes and bonds, payable to said guardian, containing definite and fixed dates of maturity and repayment, as aforesaid, which were secured by conveyances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $18,217.52; the whole of which notes, bonds and conveyances were executed by the makers thereof as evidences of and security for loans made by the said guardian from proceeds collected from said U. S. Government in payment of compensation and insurance due the said veteran.

9. That on the first day of April, 1935, the said guardian had to his credit, as deposits in banks, the amount of $2,730.93, in his name as guardian aforesaid; all of which represented and in fact were the proceeds of collections from deposits made by said guardian of the original warrants or checks issued by said Government in payment to said veteran of compensation and insurance due the said veteran by the said Government; and on the said first day [fol. 17] of April, 1935, said guardian was also in possession of certain interest bearing notes and bonds, payable to said guardian, containing definite and fixed dates of maturity and re-payment, as aforesaid, and secured by conveyances of real estate, in trust, for the purposes aforesaid, in the aggregate amount of $13,637.07; the whole of which notes, bonds and conveyances were executed by the makers thereof as evidences of and security for loans made by said guardian from proceeds collected from said U. S. Government in payment of compensation and insurance due the said veteran.

10. That on the said first days of April, 1931, 1932, 1933, 1934 and 1935, neither the said veteran nor the plaintiff, as guardian aforesaid, owned any real estate in Hertford County.

11. That prior thereto, to-wit; during the year 1930, the said veteran became the owner of an automobile, and cer-

tain other personal property, the whole of which has been regularly and yearly listed for taxation, and that the taxes due thereon have been duly and regularly paid.

12. That in the said year 1930, the said guardian listed for taxation in said Hertford County the total property in his possession as guardian aforesaid owned by his said ward, in the aggregate amount of $20,380.92, made up of and including money in banks, solvent credits, and loans secured by real estate conveyances as aforesaid, and in said year paid the taxes thereon.

13. That thereafter, and during the year 1931, the plaintiff being informed that a ruling had been made and an opinion given by the Attorney General of North Carolina, that funds received by a guardian of a World War veteran as payments of adjusted compensation or insurance from the Federal Government and invested by the guardian in either a home or in real estate notes, were not subject to taxation, appeared before the defendant Board of Commissioners and made known to said defendant the ruling and opinion aforesaid, and requested the said Board to reimburse and refund to the plaintiff the full amount of said 1930 taxes, and to relieve and discharge the plaintiff from the whole of said taxes.

14. That said Board of Commissioners, pursuant to said information and request, made an order at the time aforesaid, directing repayment and refund to the plaintiff of the whole of said taxes, and thereafter paid to the plaintiff the whole thereof.

[fol. 18] 15. That in consequence of the opinion and ruling aforesaid, and in consequence of the order made by the said Board of Commissioners, the plaintiff in neither of the years 1931, 1932, 1933, 1934 nor 1935, further listed any property of said veteran in possession of the plaintiff for taxation in said Hertford Co. and has for neither of said years, except as hereinafter set out, paid to said Hertford County any taxes thereon.

16. That during the year 1935, to-wit, on or about — day of October of said year, the defendant Board of County Commissioners acting by and through its County Accountant, under due authority from said Board of County Commissioners, caused to be set up, listed and assessed as tax-

able property of the said Harry Newsome, all monies received by the plaintiff from said U. S. Government as compensation and insurance due the said veteran, and all notes and bonds held and possessed by said guardian, as loans made by him from said compensation and insurance payments; and for each of the said years 1931, 1932, 1933, 1934 and 1935 assessed the said property and made levies thereon of taxes in favor of said county, according to the regular rates theretofore determined for each of said years, as follows, to-wit:

Property	Assessed Value	Tax Rate	Taxes
1931			
Deposits in Bank	5,787.72	1.43	82.90
Solvent credits—Real Estate Loans	13,390.28	1.43	191.47
Totals for 1931	$19,188.00	1.43	$274.37
1932			
Deposits in banks	3,868.42	1.59	61.51
Solvent credits—Real Estate Loans	17,157.58	1.59	272.79
	$21,026.00	1.59	$334.30
1933			
Deposits in banks	3,704.76	1.52	56.31
Solvent credits—Real Estate Loans	18,528.24	1.52	281.62
	$22,233.00	1.52	$337.93
1934			
Deposits in banks	987.48	1.44	14.22
Solvent credits—Real Estate Loans	18,217.52	1.44	262.54
	$19,205.00	1.44	$276.54
[fol. 19] **1935**			
Deposits in banks	2,730.93	1.54	41.95
Solvent credits—Real Estate Loans	13,636.07	1.54	210.10
	$16,367.00	1.54	$252.05

17. That the said taxes so assessed and levied by the said Commissioners, for the years aforesaid, amounted in the aggregate to the sum total of $1,475.19, the payment of which was demanded by the said defendants, by notice in writing, addressed to the plaintiff. A copy of said notice and demand is hereto attached and made a part of this case agreed.

18. That each of the items set out and shown in paragraph 16 as "Deposits in Banks", for each of said years,

represented and in fact were the collections from warrants or checks drawn and issued by the United States Government in payment of compensation and insurance due by it to plaintiff's ward, which said warrants or checks were deposited by plaintiff in such depositories and credited by them to the plaintiff's account as guardian aforesaid; and the amounts of said assessments and levies made up by said defendants on the items aforesaid and shown in said paragraph, represented and were in fact the unexpended an uninvested balances in the hands of the said guardian or payments aforesaid by the U. S. Government of warrants or checks issued by it for compensation and insurance due by it to the said veteran.

And the said items set out and shown in said paragraph 16 as "Solvent Credits and Real Estate Loans", represented and were in fact the assessed value of notes and bonds secured by conveyances of real estate, executed and delivered and made payable to said guardian, as evidences of and security for loans made by said guardian to the makers thereof, out of the proceeds derived from said compensation and insurance warrants or checks.

19. That the said assessments and levies of taxes for each of the said years 1931, 1932, 1933, 1934 and 1935, set out and shown in said paragraph 16, as "Deposits in Banks," and as "Solvent Credits and Real Estate Loans", were made up by said defendants in the year 1935, and subsequent to the general levy of taxes for said year 1935 and subsequent to the month of July of said year upon admissions made by the plaintiff in a private conversation with the attorney for said defendants and the said John A. Northcott; that the same were correct sums total of money on deposit in banks and of real estate loans due to and in favor of plaintiff on the first day of April of each of said [fol. 20] years; but the said assessments and levies were made in the absence of the plaintiff, without his consent, and without notice to show cause, if any he had, why the order made by said defendants as aforesaid in 1931, should not be revoked, or why the said property should not be assessed for taxation.

20. That on the 9th day of October, 1935, pursuant to the said written demand of the defendants, for the payment by the plaintiff of the taxes aforesaid, the plaintiff although

protesting in writing the payment thereof, paid to the defendants the full amount of taxes so assessed and levied for each of said years, aggregating the sum total of $1,475.19, and obtained from defendants, a receipt in writing showing both the payment thereof and the protest aforesaid.

21. That thereafter, to-wit: On October, 1935, the plaintiff made demand on defendants in writing, for the reimbursement, repayment and return of the full amount of said sum of $1,475.79, so paid by the plaintiff to the defendants, upon the ground and for the reason that the taxes aforesaid were unlawfully and wrongfully exacted of the plaintiff, and that the said assessments under which the said levies were made, were without warrant of law, illegal and void; which demand the defendants refused, and that defendants have failed and refused to reimburse, repay or refund to plaintiff the said sum or any part thereof, and still refuse reimbursement or repayment of the whole or any part of said sum.

The questions submitted upon the facts agreed, are as follows, viz:

1. Where a guardian of a World War veteran receives from the Veteran's Bureau of the United States Government, warrants or checks issued by said Government in payment of adjusted compensation or insurance due the guardian's ward, and said warrants or checks are deposited by the guardian in a depository, collected by it, and the proceeds are credited in the guardian's account carried in such depository, are such deposits subject to taxation by county and municipal authorities?

2. When such guardian carries in bank an account in his name as guardian of a World War veteran, consisting and made up of deposits therein of compensation or insurance warrants or checks issued and delivered by the U. S. Government; and such guardian thereafter draws upon his said account in making loans on real estate security, accepts notes and bonds as evidences of the loans, and deeds of [fol. 21] trust as security therefor, and all such notes and bonds are made payable to the guardian, containing maturities of twelve months or less, and each and all of such notes and bonds are held and retained by the guardian as assets

due his ward, are such notes and bonds the subject of taxation by county and municipal authorities?

3. Where a Board of County Commissioners, pursuant to a ruling and opinion made and given by the Attorney General of the State, holding as non-taxable all proceeds from compensation and insurance warrants or checks issued by the U. S. Government to veterans of the World War, releases and relieves a guardian of a World War veteran from payment of taxes assessed on money carried in banks and real estate loans, the whole of which being derived from compensation and insurance payments, can such Board of Commissioners thereafter and subsequent to this order aforesaid cause assessment and levy of taxes to be made on the same character of property discharged and released by its former order, without notice to or the consent of such guardian?

4. Where a Board of County Commissioners, pursuant to and in accordance with a ruling of the Attorney General of the State, made an order in 1931, releasing and discharging the plaintiff from payment of 1930 taxes on certain property held by such ruling to be exempt from taxation, can such Board in the year 1935, subsequent to the general tax levy made in said year, and subsequent to the month of July in said year, without notice to, consent of, or waiver by the tax-payer, set up, assess and levy taxes on the property aforesaid for the year 1935, and for the four years next preceding such year?''

After due consideration of the questions presented in this controversy, on the facts agreed, the Court was of opinion that plaintiff was not entitled to recover of the defendants the sum of $1,475.19, the amount paid by him as taxes for the years 1931, 1932, 1933, 1934 and 1935, and accordingly adjudged that plaintiff recover nothing of the defendant and that he pay the costs of the proceeding. The plaintiff appealed to the Supreme Court.

Lloyd J. Lawrence, for plaintiff.
W. D. Boone, for defendants.

[fol. 22] Connor, J.:

The Judgment in this case was predicated upon the affirmative answer to each of the questions presented to the

Court on the facts agreed. If these answers were correct, the judgment must be affirmed; otherwise, the judgment must be reversed, or modified.

Affirmative answers to the first and second questions are in accord with the decision of this Court in Martin vs. Guilford County, 201 N. C. 63, 158 S. E. 847, 76 L. R. A. 978, and with the decision of the Supreme Court of the United States in Trotter vs. State of Tennessee, 290 U. S. 354, 78 L. Ed. 368.

The question presented in Martin vs. Guilford County, supra, was whether property, real or personal, located in this State, and otherwise subject to taxation under its laws, is exempt from taxation, because said property is owned by a veteran of the World War, who purchased and paid for the same with money which was paid to him by the Government of the United States under provisions of the Act of Congress for the relief of veterans of the World War. Answering this question, which involved primarily a construction of sections 454 and 618, of Title 38, U. S. C. A., it was said, "We think it clear that by the enactment of sections 454 and 618, of Title 38, U. S. C. A., Congress has not undertaken to exercise any control over the property now owned by the plaintiff and that said property is not exempt from taxation by Gilford County, under the laws of this State, applicable to said property as well as to all other property in said county". The property owned by the plaintiff in that case was a lot of land and an automobile, both of which had been purchased by the plaintiff with money paid to him by the Government of the United States as compensation and insurance under the Act of Congress. The plaintiff was a veteran of the World War, and had paid the taxes levied on his property by Guilford County. It was held that plaintiff was not entitled to recover of the defendant the amount of said taxes, on the ground that his property was exempt from taxation by Guilford County under the provisions of sections 454 and 618 of Title 38, U. S. C. A.

Martin vs. Guilford County is cited with approval by Justice Cardozo in Trotter vs. State of Tennessee, supra. In his opinion in that case, he says: "Exemptions from taxation are not to be enlarged by implication if doubts are [fol. 23] nicely balanced, Chicago Theological Seminary vs. Illinois, 188 U. S. 662, 46 L. Ed. 641. On the other hand

they are not to be read so grudgingly as to thwart the purpose of the lawmakers. The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh vs. Aubrey, 185 U. S. 122, 46 L. Ed. 834. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. Cf. McIntosh vs. Aubrey, supra: State Ex rel Smith vs. Shawnee County, 132 Kan. 233, 294 Pac. 915, Wilson vs. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825, and Surrance vs. Donna, 248 N. Y. 18, 161, N. E. 315. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'compensation, insurance and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the State. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here".

We can see no distinction in law, for purposes of taxation, between stocks and bonds, and notes and bank deposits and other solvent credits. No such distinction is made by the laws of this State. It is provided by statute that personal property shall include: "All notes, bonds, accounts receivable, money on deposit, postal savings, securities and other credits of every kind belonging to citizens of the State over and above the amounts respectively owed by them, whether such indebtedness is due them from individuals or from corporations, public or private, and whether such debtors reside within or without the State". C. S. 7971 (18). This statute was enacted by the General Assembly of this State in obedience to the mandate of the Constitution of North Carolina, sec. 3 of Article V.

An affirmative answer to the third question was manifestly correct. If, as the plaintiff was informed, the Attorney General of this State made a ruling and gave an opinion as set out in the facts agreed, such opinion was advisory, only. It was given by the Attorney General in the [fol. 24] performance of his duty as prescribed by statute.

C. S. 7694 (5). The ruling in accordance with the opinion was not authoritative. At most, it could be invoked by the defendants in support of their action in refunding to the plaintiff the amount paid by him as taxes for the year 1930. The defendants were under no legal duty to inform the plaintiff that they had been subsequently advised that the property belonging to his ward, and in his hands as guardian, was not exempt from taxation by Hertford County.

An affirmative answer to the fourth question was also correct. On the facts agreed the defendants were authorized by statute to list for taxation by Hertford County, for the years 1935, 1934, 1933, 1932 and 1931—five years—the property belonging to the estate of his ward, which the plaintiff had failed to list for said years. C. S. 7971(50). It is true that defendants did not comply strictly with the provisions of the statute relative to procedure, but there was a substantial compliance with these provisions. It is not contended by the plaintiff that he has been prejudiced by the failure of the defendants to comply with the letter of the statute. On the contrary, the plaintiff agrees that the property was properly listed and was properly assessed for taxation, unless it was exempt from taxation under the laws of the United States.

The Act of Congress of 12 August 1935, is not applicable to this case. However, it is provided in said Act that provisions with respect to exemption from taxation of payments due under the Act of Congress for the relief of veterans of the World War "shall not extend to any property purchased in part or wholly out of such payments". This is a legislative recognition of the construction by this Court and by the Supreme Court of the United States of sections 457 and 618 of Title 38, U. S. C. A., and supports the decision in the instant case.

There is no error in the judgment. It is Affirmed.

A true copy. Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fols. 25-37] Petition for rehearing, covering 14 pages, filed Aug. 10, 1936, omitted from this print. It was denied, and nothing more by order of September 1, 1936.

[fol. 38] In Supreme Court of North Carolina, Spring Term, 1936, Hertford County

No. 172

L. J. Lawrence, G'd'n of Harry Newsome, Incompetent,

v.

John A. Shaw, W. C. Ferguson, C. T. Whitley, B. N. Sykes, J. M. Eley and T. W. Sears, Constituting and Comprising The Board of Com'r's of Hertford Co., and John A. Northcutt, County Accountant of said Hertford Co.

Judgment

This cause came on to be argued upon the transcript of the record from the Superior Court of Hertford County: upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is, therefore, considered and adjudged by the Court here, that the opinion of the Court, as delivered by the Honorable Geo. W. Connor, Justice, be certified to the said Superior Court, to the intent that the judgment is affirmed.

And it is considered and adjudged further, that the plaintiff and sureties E. N. Nicholson and F. B. Parker do pay the costs of the appeal in this Court incurred, to-wit, the sum of seventeen 00/100 dollars ($17.00), and execution issue therefor.

A True Copy.

Edward Murray, Clerk of the Supreme Court.

[fol. 39] In Supreme Court of North Carolina

Docket Entries

Appeal docketed 27 April, 1936.
Case submitted under Rule 10.
Opinion filed 30 June, 1936.
Final judgment entered 30 June, 1936.
Petition to rehear filed 10 August, 1936.
Petition denied 1 September, 1936.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this 16 October, 1936.

Edward Murray, Clerk of the Supreme Court of the State of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 40] Supreme Court of the United States

Order Allowing Certiorari—Filed January 4, 1937

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U.
FILED
NOV 28 1936
CHARLES ELMORE CROP
CLER

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 549

L. J. LAWRENCE, GUARDIAN OF HARRY NEWSOME, INCOMPETENT VETERAN,

Petitioner,

vs.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA AND BRIEF IN SUPPORT THEREOF.

JOHN E. BENTON,
LLOYD J. LAWRENCE,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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No. 549

L. J. LAWRENCE, GUARDIAN OF HARRY NEWSOME, INCOMPETENT VETERAN,

Petitioner,

vs.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, B. N. SYKES, J. M. ELEY AND T. W. SEARS, CONSTITUTING AND COMPOSING THE BOARD OF COMMISSIONERS OF HERTFORD COUNTY, AND JOHN A. NORTHCOTT, COUNTY ACCOUNTANT OF SAID HERTFORD COUNTY.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, L. J. Lawrence, guardian of aforesaid incompetent veteran, prays that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina, in the above entitled action, which became final September 1, 1936, *on the specific question left open by*

this honorable court in the case of Trotter v. *Tennessee*, 290 U. S. 354, 78 L. Ed. 358.

In support thereof, petitioner respectfully represents to this Honorable Court that petitioner is and was at all times since the year 1929, the duly appointed and qualified guardian of Harry Newsome, an incompetent veteran of the World War, acting under due authority from the Superior Court of Hertford County, North Carolina, and governed by the rights and duties arising under the laws of said State, and the Acts of Congress, in particular Section 454, Title 38 U. S. C., 43 Stat. 613, and sections 3 and 5, Public No. 262, 74 Congress (Act of August 12, 1935) 1935 Supplement to Title 38 U. S. C. A. (49 Stat. 607).

Action in the State Courts.

On or about the 1st day of October, 1935, the County Accountant of Hertford County, North Carolina, acting for and on behalf of the Board of Commissioners of said Hertford County, upon admissions made to him by petitioner that the amounts then exhibited to petitioner as his deposits in banks and as the value of notes held by him, secured by loans on real estate security, for the years 1931, 1932, 1933, 1934 and 1935, were the correct amounts of such deposits and loans at such times, in the absence of petitioner, without his consent, and without notice to show cause, if any he had, why the said property should not be valued and assessed as taxable property of the said veteran, all moneys received by the petitioner as compensation and insurance from the United States government which were on deposit in banks in each of said years to the credit of said guardian, and held by him intact in an ordinary checking account, and further set up, listed and assessed as taxable property of the veteran aforesaid, all notes possessed by said guardian during each of said years, as temporary loans secured by real estate.

On or about the 3rd of October, 1935, the said County Accountant, without having at any time theretofore given the petitioner notice, and without affording him an opportunity to be heard upon either the values or the validity of such taxes, rendered to petitioner a statement, in writing, showing as assessment of $256.89 taxes on his deposits in banks, and the sum of $1,218.36 taxes on said real estate loans, and demanded of said guardian the payment thereof.

On October 9, 1935, pursuant to said written demands, the petitioner, though protesting, in writing, the payments of said taxes, paid the same in full, and obtained from said County Accountant a written receipt, showing both the payments and protest thereof.

In due time, petitioner made demands on the defendants for refund and return to him of the said $1,475.19, on the ground that said assets being derived from payments of compensation and insurance by the Federal Government were exempt from taxation by virtue of the Federal Statutes, Section 454, Title 38 U. S. C., as amended, and upon the refusal of defendants to refund or return any part thereof, on the 17th day of February, 1936, *in a case* agreed, petitioner and defendants submitted the facts, upon which their controversy depended, to the Superior Court of Hertford County. Judgment for the defendants was rendered in the Superior Court April 4, 1936, and an appeal was thereupon made by petitioner to the Supreme Court of North Carolina.

On June 30, 1936, the said Supreme Court filed an opinion in said controversy without action, affirming the judgment of the said Superior Court. Thereafter, on August 19, 1936, within 40 days, the time allowed under the rules of said court and the consolidated statutes of said State, petitioner filed in the Supreme Court of North Carolina, a

petition to rehear the said controversy, which petition on September 1, 1936, was denied by said Court.

The effect of which denial is that the judgment of the Supreme Court of North Carolina, the highest court in said State having jurisdiction of said controversy, became final on September 1, 1936.

This petition for a writ of certiorari is filed within three months of the time when said judgment became final and there is presented herewith a certified copy of the entire record and proceedings including those in the Supreme Court of North Carolina and the petition to rehear.

This petition for a writ of certiorari is filed under the provisions of Title 28 U. S. Code, Section 344, Paragraph (b), Sec. 237 Judicial Code, as amended.

Summary and Brief Statement of the Matters Involved.

Question Presented.

The question presented here is the specific question left open by this court in its decision in the case of *Trotter* v. *Tennessee, supra,* wherein it was stated: "The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. * * * *We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank.* * * * We think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings." (Emphasis supplied.)

In this case the moneys on deposit in checking account in the bank were placed there by depositing Government checks in payment of compensation and insurance, and from the same source came the moneys invested in the notes, thereby presenting squarely the question reserved as to moneys in the hands of a guardian of an incompetent veteran. Your

petitioner insists that such funds are exempt from taxation by virtue of the Federal statutes cited *supra*.

Facts and Statutes Involved.

While the amount in controversy is small, the matters at issue are of much importance, since the determination of the issues arising enter into and affect a proper administration from year to year of the trust committed to petitioner, and likewise affects numerous other trusts of a similar character, involving the same issues. A determination of these issues is essential in order that petitioner, and those similarly affected may discharge the duties of such trusts according to the laws of their respective States, and according to the Acts of Congress.

Thus, the judgment complained of would deprive such insane veteran of a right, privilege or immunity granted him by the Federal statutes.

Facts From Which Controversy Arises.

Petitioner qualified as guardian of said incompetent in 1929, and in the year 1930 listed for taxation in said Hertford County the total property of his ward, which list set up and contained moneys in banks, notes secured by conveyance of real estate, and all solvent credits, comprising the total property of his ward, and aggregating $20,380.92. Taxes thereon were levied by the defendant Board of Commissioners, and the same were in due course paid by said guardian.

Thereafter, in the year 1931, petitioner having been informed of a ruling of the Attorney General of North Carolina, that all of such property of a World War veteran was exempt from taxation, appeared before the defendant Board of Commissioners and asked a refund of the total

taxes paid. An order was made by the Commissioners directing refund of the whole of such taxes, and a refund to petitioner was thereafter made (R. 5).

Subsequent to such order, no listing of such property was made by petitioner, but in the year 1935, in consequence of the decisions of *Trotter* v. *Tennessee,* 290 U. S. 354, 78 L. Ed. 358, and *Martin* v. *Guilford County,* 201 N. C. 63, 158 S. E. 847, 76 L. R. A. 978, the defendant Board of Commissioners, acting by and through the County Accountant and the clerk of said Board, having obtained from petitioner, in a private conversation, an admission of the values of moneys in bank and of notes secured by real estate conveyances, belonging to and owned by petitioner as guardian of said veteran, as of April 1st, 1931, 1932, 1933, 1934 and 1935, in the absence of petitioner, without his knowledge or consent, and without notice, proceeded to assess the same for taxation; and on or about the 3rd day of October, 1935, rendered to petitioner a written statement of the value of said property so assessed, and a demand for payment of $1,475.19, the amount of taxes levied thereon (R. 6).

On October 9, 1935, pursuant to these demands, petitioner protested, in writing, the said assessment and levy, and paid under protest the amount of said levy. Immediately thereafter, petitioner made demands on said defendants for a refund of said taxes, which demand was refused, and upon such refusal, and no part having been refunded, a submission of the controversy, without action, was made to the Superior Court of Hertford County, North Carolina, on February 17, 1936 as provided by the 1935 Code, N. C. Art. 25, Secs. 626-8 (see *McKethan* v. *Ray,* 71 N. C. 165), *i. e.,* a judgment was sought on an agreed case stated. Judgment was rendered therein on April 4, 1936 (R. 12). From which petitioner appealed to the Supreme Court of North Carolina.

On June 30, 1936, said Supreme Court filed an opinion affirming the judgment of said Superior Court (R. 13).

On August 10, 1936, and in apt time, petitioner filed in said Supreme Court a petition to rehear the said controversy (R. 25) which petition was denied by said Court on September 1, 1936 (R. 25).

Petitioner's Contention as to Right of Recovery, and Basis of Exemption Claimed.

The ground upon which petitioner bases his claimed right of recovery of the taxes paid is the exemption contained in the Federal Statute. Section 454, Title 38 U. S. C., Sec. 22 World War Veterans' Act 43 Stat. 613 provided: "that the compensation, insurance * * * payable under Title II, III and IV, respectively * * * shall be exempt from all taxation." (This section is printed in full at p. 22.) The language of this statute was construed by this Court with reference to taxation of real estate, purchased by a guardian out of the proceeds of payments of compensation and insurance, in the case of *Trotter* v. *Tennessee*, *supra*, wherein it was held that the exemption does not extend to "permanent investments or the fruits of business enterprises". There was not involved, and the court did not decide, but specifically reserved the question raised in the instant case.

Said Section 22 (Sec. 454, Title 38 U. S. C.) was amended by the Act of August 12, 1935, Public No. 262, 74th Congress, 49 Stat. 607, to read as follows (in part): "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating "to veterans *shall be exempt from taxation*, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or

under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments''.* (Emphasis supplied.)

Section 5 of the same act is as follows:

> ''That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein.''

(Sections 3 and 5 are printed in full at pages 22-23.)

It will be noted that Section 454, *supra,* was in effect during all the years for which the tax was assessed, but that at the time the action was initiated by the Taxing Authorities, October, 1935, said section had been repealed and superseded by Section 3, Public No. 262, *supra,* which latter law is by Section 5, Public No. 262, *supra,* made applicable prospectively to all payments made prior, or subsequent to, the effective date thereof.

It is the position of petitioner that the funds are exempt under said Statutes and that the Supreme Court of North Carolina erred in deciding adversely to such contention.

Jurisdiction.

This Court has jurisdiction, as provided in Title 28 U. S. C., Sec. 344 Par. (b) to review, by Certiorari, the action of the court below which erroneously construed the Federal Statute and thereby deprived petitioner's ward of a property right, privilege or immunity arising under said Federal Statute and which was appropriately claimed on his behalf.

Assignments of Error.

The Supreme Court of North Carolina erred in holding that:

1. Compensation and insurance funds, paid to World War Veteran or his guardian and deposited by him in a bank, drawing no interest, and payable, without restriction, as the depositor should draw checks against such accounts, are taxable solvent credits despite Section 454, Title 38 U. S. C. as amended.

2. The Act of Congress, approved August 12, 1935, being Public No. 262, 74th Congress (H. R. 3979) 49 Stat. 607, has no application to the facts in the instant case.

3. Petitioner was not entitled to recover any part of said taxes, in the instant action.

Reasons for Allowance of the Writ.

Petitioner respectfully represents that the Writ of Certiorari should issue, because

1. The Supreme Court of North Carolina, in reaching its conclusions, erroneously decided certain Federal questions adversely to petitioner's contentions, and, it is believed, contrary to the purpose and intent of Congress, and the decisions of this Court;

2. A proper construction of the Federal statutes mentioned, involves a large number of veterans, or other beneficiaries, or their guardians, their respective rights and interests, and, in the case of a beneficiary under guardianship, a proper administration of trust funds;

3. The decision and opinion of the North Carolina Supreme Court operates a denial to petitioner of a right, privilege or immunity granted by Federal law.

The Federal questions erroneously decided by the Supreme Court of North Carolina were:

First. That compensation and insurance funds paid to a veteran, or his guardian, and deposited by him in bank, payable, without interest, as such depositor should draw checks thereon, are taxable solvent credits despite Section 454, Title 38 U. S. C.

Second. That the Act of Congress, approved August 12, 1935, or Public No. 262, 74th Congress (H. R. 3979) 49 Stat. 607, has no application to the instant case, although it is expressly provided by this Act that it should apply from the date of its approval to payments made theretofore under any of the Acts therein.

Petitioner insists that:

(a) The Congress of the United States has the right and power to create tax exemptions and immunities and did enact legislation to this effect, Section 454, Title 38 U. S. C. (43 Stat. 613).

(b) The said Section 454 made these funds exempt from taxation in the hands of a guardian when uninvested in permanent taxable property, and that a deposit in a bank for temporary safe-keeping is not an investment within the contemplation of this Court's decision in *Trotter* v. *Tennessee,* nor within the intent and scope of Section 3, Public No. 262, 74th Congress (49 Stat. 607).

(c) The Act of Congress, approved August 12, 1935, or Public No. 262, 74th Congress, was a valid exercise of the powers conferred, extending to and prospectively operating upon all deposits of compensation and insurance funds paid to and deposited by petitioner in bank, whether paid prior or subsequent to the passage of such Act.

(d) The said Act of 1935, is applicable to the facts in this case.

(e) The effect of such Act is to create tax exemption of the money in bank deposited by petitioner as compensation and insurance payments, on which the levy was made by defendants, and taxes exacted.

Attached hereto is the brief of petitioner in support of his petition for said writ of certiorari, to which reference is respectfully made for the authorities in support of this petition.

WHEREFORE, your petitioner respectfully requests that this Court issue a writ of certiorari to the Supreme Court of North Carolina (at Raleigh), to certify and send to this Court a full and complete transcript of the record herein, to the end that the case may be reviewed and determined by this Court as provided by law, and that the decision in said case by the North Carolina Supreme Court may be reversed, and for such other and further relief as may be appropriate and granted in the premises, and your petitioner will ever so pray.

JOHN E. BENTON,
LLOYD J. LAWRENCE,
Attorneys for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 549

L. J. LAWRENCE, GUARDIAN OF HARRY NEWSOME, INCOMPETENT,

Petitioner,

vs.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, B. N. SYKES, J. M. ELEY AND T. W. SEARS, CONSTITUTING AND COMPOSING THE BOARD OF COMMISSIONERS OF HERTFORD COUNTY; JOHN A. NORTHCOTT, COUNTY ACCOUNTANT OF SAID HERTFORD COUNTY

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion of the Court Below.

The opinion of the Supreme Court of North Carolina, filed June 30, 1936, appears on page 13 of the record, and is reported in the Advance Sheets of N. C. Reports, Volume 210, page 352, 186 S. E. 504.

The North Carolina Supreme Court affirmed the judgment of the Superior Court of Hertford County dated April 4, 1936, appearing at page 12 of the record, which held that

deposits in bank by petitioner, guardian of a World War Veteran, of compensation and insurance funds, are subject to taxation by county and municipal authorities, and adjudged that petitioner recover nothing.

Within 40 days thereafter, and in apt time, petitioner filed in the said Supreme Court his petition to rehear the controversy, which was denied by the court on September 1, 1936, and the judgment in said court became final on September 1st, 1936.

This Court Has Jurisdiction.

First. The power and authority of the United States Supreme Court to review the final judgment of the North Carolina Supreme Court, in the instant case, is clear. Title 28 U. S. Code, Section 344 (b).

Ward v. *Love County,* 253 U. S. 17.

In that case it was held that where allotments belonging to Indians of Oklahoma which were made exempt from taxation by Federal laws, were assessed by county officials, and in consequence of demands by such officials, the Indians paid the taxes under protest, and thereafter brought suits to recover the amounts so paid, the U. S. Supreme Court had jurisdiction to review a judgment of the State court, the effect of which was to deny a Federal right.

Second. The right of the petitioner takes its origin in the laws of the United States, and involves a controversy respecting the construction and effect of such laws in order to determine such right. It presents a Federal question.

Savings Bank v. *Archibold,* 104 U. S. 708.

In this case the plaintiff sued to recover the amount of certain taxes collected by defendant, the determination of which depended upon the construction of a Federal statute containing certain exemptions.

Third. On August 10, 1936, petitioner filed in the Supreme Court of North Carolina a petition to rehear, which was denied by that court September 1st, 1936. The period of three months allowed to petitioner to apply for certiorari commences from September 1st, 1936.

Citizens Bank v. *Opperman*, 249 U. S. 448.

In that case the court held that the power of this Court to review judgments or decrees in State courts upon writs or error, or by certiorari, wherein is drawn in question the validity of a statute, or an authority exercised under any statute on the ground of their being repugnant to the Constitution treaties or laws of the United States, that the judgment does not become final in the State Court, where a petition for rehearing was filed, until such petition has been denied or otherwise disposed of, and the three months limitation begins to run from the date of such denial or other disposition.

Statement.

A statement of the material and essential facts is set out in the Petition (pages 2 to 6 hereof) and in the interest of brevity are not repeated but reference is hereby made thereto.

Assignments of Error.

It is respectfully insisted that the Supreme Court of North Carolina erred in holding that:

1. Compensation or insurance funds paid by the Federal Government to a World War veteran, or his guardian and deposited by him in bank to his credit, bearing no interest and subject to withdrawal by his checks without restriction, are taxable solvent credits, despite Section 454, Title 38, U. S. C. (43 Stat. 613).

2. The 1935 Act of Congress, Public No. 262, 74th Congress (H. R. 3979) (49 Stat. 607), approved August 12, 1935, is not applicable to the instant case.

3. The petitioner had no right to recover any part of the tax levied.

Upon each of these assignments of error, the following argument is submitted:

1. Compensation and insurance payments received by a guardian on behalf of a beneficiary and deposited in a bank are exempt from taxation by virtue of Section 22, World War Veterans' Act (Sec. 454, Title 38 U. S. C.)

Whether the funds in this case are exempt from taxation is dependent upon whether the Congress of the United States, in the exercise of its constitutional powers, has enacted legislation extending such exemption to compensation and insurance payments deposited in a bank. Logically it would seem pertinent first to inquire whether the statute relied upon may, or perhaps must, be so construed. This is a question of first impression, which has not been decided by this Court or indeed, so far as is known, by the court of last resort of any State other than in the instant case.

The question, of course, is not confined to the act of a guardian receiving checks from the Government in payment of compensation or insurance and depositing such checks or the proceeds thereof in a bank for safekeeping: for Section 22 if applicable applies as well to all beneficiaries *sui juris* who so deposit their war benefits. In short what is the effect of the law, and what is the intent thereof? While the Federal Government might tax war benefits paid a veteran, it seems clear that a State could not do so *as such*, since that would defeat the beneficial purpose of the grant. *McCulloch* v. *Maryland*, 4 Wheat. 316.

"The power to tax is the power to destroy". Hence the purpose of Section 22 must extend beyond a mere declaration of what the law was before its enactment: *i. e.*, it must contemplate that the funds themselves when received are exempt. The immunity created by Congress goes to the thing itself, that is to the funds derived from the payments, the actual proceeds of the checks issued, and not to the mere chose in action, or right to collect; to the substance, not the shadow.

When permanently invested they are not immune. *Trotter* v. *Tennessee*, 290 U. S. 354. The question was left open as to funds not invested.

Are funds invested within the purview of the above decision when they are deposited as in the instant case? A deposit of funds in a checking account, bearing no interest, is not an investment.

LaBelle Iron Works v. *U. S.*, 256 U. S. 388.

In that case it was said by this Court that " 'to invest' imports a laying out of money, or moneys worth, with a view to obtaining income or profit, and involving a conversion of wealth from one form into another suitable for employment in the making of the hoped-for-gains."

The question may be clearer if the later legislation be considered. Subsequent to the decision in the *Trotter* case, *supra*, the Congress enacted an Act approved August 12, 1935, entitled "An Act to safeguard the estates of veterans derived from payments of pensions, compensation, emergency officers' retirement pay and insurance, and for other purposes," in Section 3 of which it clarified its intention in respect to such exemptions by providing that—

> "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation * * *

> either before or after receipt by the beneficiary. * * * nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments."

By Section 5 of this Act its provisions were extended to payments made theretofore under any of the acts mentioned in the 1935 Act, which include the payments made in the instant case.

The 1935 Act makes manifest the intention of Congress following the decision of the *Trotter* case, that when such funds lost the quality of money and became permanently invested, they likewise lost their tax immunity, but it is also apparent that until the moneys received were permanently converted into real or personal property, otherwise subject to taxation, the immunity remained. It is true the exception to the broad immunity is stated in the negative, but the maxim, "*expressio unius est exclusio alterius*" obtains.

From the above it must be concluded that the provisions of Sections 3 and 5, Public No. 262, 74th Congress are applicable to the facts of the instant case; if not in fact controlling they by virtue of the clearer expression of the Congressional intent are a guide to the proper construction of Section 22, World War-Veteran-' Act amended thereby. This would seem decisive of the question left open in the *Trotter* case.

2. So construed, such exemption provisions are constitutional and constitute the valid exercise of legislative power.

Here again the question seems to be one of first impression. This Court has held in *U. S.* v. *Hall,* 98 U. S. 343, that the United States "as the donor of the pensions, may through the Legislative Department of the Government annex such conditions to the donation as they see fit to insure its transmission unimpaired to the beneficiary. * * * Because the fund proceeds from the United States, and in-

asmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary * * *. Compensation is likewise a donation, and the insurance in the instant case being term insurance partakes of the nature of a pension or gratuity. *White* v. *U. S.*, 270 U. S. 175; *U. S.* v. *Worley*, 281 U. S. 339. This is particularly apt in the instant case since the permanent and total disability benefits enjoyed by the veteran were not covered by the premium paid, but the cost thereof was assumed by the United States.

That the protection may extend beyond receipt of benefits by the beneficiary seems implied by the decision of this Court in the case of *Spicer* v. *Smith*, 288 U. S. 430, wherein the court said:

> "The provisions for exemption, not assignability and suspension of payments plainly imply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose *to safeguard to beneficiaries the appropriations and payments made for their benefit* (United States *v.* Hall, 98 U. S. 343, 353. Westfall *v.* United States, 274 U. S. 256) and evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves * * *."

Indeed, the cases cited by this Court in the *Trotter* case, *supra*, with disapproval (*Rucker* v. *Merck*, 172 Ga. 793; *City of Atlanta* v. *Stokes*, 163 S. E. 270; *Payne* v. *Jordan*, 36 Ga. Apps. 787) proceeded on the theory that under its war-making power the Congress *has authority* to extend the exemption to property purchased by such funds. This Court decided the question on an entirely different basis, viz: that an intent so to do was not clearly expressed in the statute.

State exemption laws, both as to claims of creditors and as to taxation, have been sustained even as to pensions received and invested. See *Surace* v. *Danna*, 248 N. Y. 18, 161 N. E. 315; and *Manning* v. *Spry*, 121 Ia. 196, 96 N. W. 873.

The North Carolina Statute exempting from taxation pensions paid by either the State or Federal Government, Section 5168 (a. a.), North Carolina Code 1935 Ann., (quoted in full at page 23) has apparently not been construed, and was not applied to this case by the Supreme Court of that State.

The cases, while not decisive of the specific point, seem to leave little doubt th the exemption as to taxation may constitutionally be extended to the funds in the hands of the beneficiary or his guardian.

Summary.

It will, therefore, be seen that—

A. This Court has jurisdiction to review the judgment of the North Carolina Supreme Court in the instant case, because of the Federal questions presented.

B. The deposit of compensation or insurance payments in bank by a veteran, or his guardian, to his credit and subject to his withdrawal at his option, and bearing no interest, does not constitute taxable solvent credits or investments; and that such funds are exempt from taxation because of Section 454, Title 38 U. S. C. (43 Stat. 613).

C. The Act of Congress, approved August 12, 1935 (49 Stat. 607), has both prospective and retrospective effect, and applies retrospectively to the payments made to petitioner prior to the passage of the Act, and consequently to the action in this case, either directly or by way of clarification of legislative intent.

D. The Supreme Court of North Carolina erred in deciding this case to the contrary, and in holding that petitioner was not entitled to recover.

E. The said Supreme Court, in so deciding, deprived an incompetent veteran, and petitioner, of a right, privilege or immunity, granted or assured under an Act of Congress and the Federal Constitution, and should be reversed.

Conclusion.

It is respectfully submitted that this Court has jurisdiction of the subject matter of this action; that petitioner is entitled to appear and seek a review by this Court of the judgment below; that such judgment is erroneous; and in view of the importance of the question, and its wide application to many other cases of similar trusts, as well as in thousands of cases of veterans *sui juris*, this Court should grant the writ of certiorari as prayed herein, and construe the law applicable.

JOHN E. BENTON,
LLOYD J. LAWRENCE,
Attorneys for Petitioner.

APPENDIX.

Section 22, World War Veterans' Act (454 Title 38, U. S. C.) (43 Stat. 613).

"That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, and IV; and shall be exempt from all taxation: Provided, That such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Titles II, III, IV, and V against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.

"That the provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of such Act of his interest in such insurance to any other member of the permitted class of beneficiaries."

Sections 3, 4 and 5, Public No. 262—74th Congress.

Approved August 12, 1935. (49 Stat. 607.)

SEC. 3. Payments of benefits due or to become due shall not be assignable and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments. Section 4747 of the Revised Statutes and section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be

construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries.

SEC. 4. If any provision, sentence, or clause of this Act or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 5. That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein.

Consolidated Statutes of North Carolina, Section 5168 (a. a.)

Exemption of Pensions or Compensations from Taxation.

Every person receiving a pension or compensation from the state, or United States, or any foreign country or government, for and on account of wounds or physical disabilities contracted or sustained during the late war between the United States and Germany, and any of the allied countries cooperating with the United States, shall not be required to pay any tax of any kind upon such pension or compensation, but the same shall be exempted from any and all taxes.

This section shall apply to all such taxes for the year one thousand nine hundred and twenty-three, and thereafter.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 549

L. J. LAWRENCE, GUARDIAN OF HARRY NEWSOME, INCOMPETENT,

Petitioner,

vs.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

BRIEF FOR RESPONDENTS.

W. D. BOONE,
Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 549

L. J. LAWRENCE, GUARDIAN OF HARRY NEWSOME, INCOMPETENT,

Petitioner,

vs.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, B. N. SYKES, J. M. ELEY AND T. W. SEARS, CONSTITUTING AND COMPOSING THE BOARD OF COMMISSIONERS OF HERTFORD COUNTY; JOHN A. NORTHCOTT, COUNTY ACCOUNTANT OF SAID HERTFORD COUNTY.

BRIEF FOR RESPONDENTS.

The two-fold question presented is whether solvent credits acquired by a guardian of an incompetent World War Veteran with moneys received from the United States are subject to taxation when such solvent credits are (1st) notes secured by deeds of trust and mortgages on real estate, and (2nd) general deposits on checking account in a bank.

Prior to and during the years 1931 to 1935, both inclusive, the guardian petitioner received from the United States payments for compensation and insurance for the benefit of his incompetent ward, some of which payments were deposited in bank on checking account, and some of which were lent on interest bearing notes secured by deeds of trust or mortgages on real estate. Neither such bank deposits nor the notes and deeds of trust were listed for taxation during either of the years 1931 to 1935, both inclusive, until subsequent to July and prior to October, 1935, when the same were entered for taxation and assessed by

the Board of County Commissioners of Hertford County. The respondent paid the taxes so assessed, under protest, and sued to recover. The Supreme Court of North Carolina affirmed the judgment of the Superior Court denying the guardian's right to recover the taxes paid, and the petitioner brings certiorari.

Until Section 22, World War Veterans' Act (454 Title 38, U. S. C., 43 Stat. 618) was amended by the Act of August 12, 1935 (Public No. 262, 74th Congress), it appears that the exemption from taxation ceased upon the payment to the veteran or his guardian, as the Court denied certiorari in the case of *State ex rel. Smith* v. *Board of Commissioners of Shawnee County* (132 Kan. 233, 294 Pac. 915), 283 U. S. 855, 51 S. Ct. 648. And until such amendment, we understand that the decision of this Court in *Trotter* v. *Tennessee*, 290 U. S. 354, 54 S. Ct. 138, held that "veterans who choose to trade in lands or in merchandise, in bonds or in shares of stock, must pay their tribute to the State", but that decision leaves open the question whether the moneys on deposit in a bank should be exempt from taxation. Consequently, the pertinent query is the significance of the amendment of August 12, 1935 (Public No. 262, 74th Congress, 49 Stat. 607), and its bearing on the decision of this Court in *Trotter* v. *Tennessee*, *supra*.

The Report of the Senate Finance Committee (Report No. 1072, Calendar No. 1121, 74th Congress, First Session) is quite expressive of the purpose of Congress to "place the law in conformity with the decisions of the Supreme Court (of the United States) on the subject". And the Report from the House Committee on World War Veterans Legislation (House of Representatives Report No. 16, 74th Congress, First Session) states that "there is a need for amendatory legislation to replace Section 22, World War Veterans' Act (U. S. C. Sec. 454, Title 38) and Section 4747, Revised Statutes, in order that the same protection, immunity and exemption may be provided for all benefits".

The amendment of August 12, 1935 (49 Stat. 607), explicitly provides that "the exemption herein contained as to taxation shall not extend to any property purchased in part or wholly out of such payments". The funds from such payments were used for two purposes by the petitioner—as loans on real estate securities and as general deposits in bank—both being solvent credits. Can it be questioned that had he bought corporate bonds with the funds which he used as loans on real estate securities, such bonds would be subject to taxation under the language of the amendment? The deposit in a bank of funds from such payments created a solvent credit held by the depositor against the bank. The identity of the fund was lost among the general assets of the bank.

The similarity in character of the two classes of solvent credits involved in the case at bar makes it difficult to draw any distinction as to their liability to taxation, and the brief of the petitioner tacitly concedes that the notes should be taxed. We submit that the question of the exemption of the bank deposits from taxation has not been decided, so far as we can ascertain, but we are unable to reconcile such exemption as claimed by the petitioner with the apparent purpose of the amendment of August 12, 1935, as declared in the Committee Reports cited *supra*.

"Exemptions from taxation are not to be enlarged by implications if doubts are nicely balanced." *Trotter* v. *Tennessee*, *supra*.

It is respectfully submitted that the notes secured by real estate deeds of trust or mortgages and the deposits in bank as a solvent credit are subject to taxation and that the Supreme Court of North Carolina has properly so held.

W. D. Boone,
Attorney for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 549.—October Term, 1936.

L. J. Lawrence, guardian of Harry Newsome, incompetent, Petitioner,
vs.
John A. Shaw and others, members of and constituting the Board of Commissioners of Hertford County, et al.

On Writ of Certiorari to the Supreme Court of the State of North Carolina.

[March 1, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The controversy in this case relates to the liability to local taxation of certain bank deposits made by the petitioner as guardian of an incompetent veteran of the World War. Immunity was claimed under the federal statutes. World War Veterans' Act, 1924, sec. 22,[1] 43 Stat. 606, 613, 38 U. S. C. 454; Act of August 12, 1935, secs. 3 and 5,[2] 49 Stat. 607, 609. The Supreme Court of North Carolina denied the immunity (210 N. C. 352) and this Court granted a writ of certiorari. January 4, 1937.

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[1] Section 22 provides:

"Sec. 22. That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, or IV; and shall be exempt from all taxation: *Provided*, That such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Titles II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable". . . .

[2] Sections 3 and 5 of the Act of 1935 provide:

"Sec. 3. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments. Section 4747 of the Revised Statutes and section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly". . . .

"Sec. 5. That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein".

The controversy was submitted to the state court upon an agreed case. It appeared that petitioner was appointed guardian in May, 1929, and that the veteran then owned no property other than claims against the United States for unpaid compensation and insurance. The tax date in North Carolina for property taxation is April 1st. In 1930 the guardian listed for taxation the property of his ward but the tax paid was refunded under a ruling of the Attorney General of the State, and in consequence no property of the ward was listed and no tax was paid in the subsequent years. In October, 1935, however, the tax officials assessed the ward's property for each of the years 1931 to 1935, inclusive.[3] The property consisted of deposits in banks and real estate loans. No question is raised by the petitioner with respect to the taxability of the latter. See *Trotter* v. *Tennessee*, 290 U. S. 354.

The agreed case showed the bank deposits as they stood on April 1st of each year.[3] It does not appear when the amounts making up these annual balances had been deposited or whether there was any special agreement relating to them. They are scheduled as "deposits in bank", without more. The stipulation states that they "represented and, in fact, were the collections from warrants or checks drawn and issued by the United States Government in payment of compensation and insurance" due to the ward, that these warrants or checks were deposited by the guardian and credited in his bank account, and that the items assessed were "the unexpended and uninvested balances", in the hands of the guardian, of the payments thus made by the Government.[4] Petitioner paid the taxes under protest and demanded refund which was refused.

We are not concerned with the questions submitted to the state court upon the agreed case so far as they related to the authority

[3] They were $5787.72 in 1931, $3868.42 in 1932, $3704.76 in 1933, $987.48 in 1934, and $2730.93 in 1935.

[4] The paragraph of the agreed case upon this point is as follows:

"That each of the said items set out and shown in paragraph 16 as 'Deposits in Banks', for each of said years, represented and, in fact, were the collections from warrants or checks drawn and issued by the United States Government in payment of Compensation and Insurance due by it to plaintiff's ward, which said warrants or checks were deposited by plaintiff in such depositories and credited by them in the plaintiff's account as guardian aforesaid; and the amounts of said assessments and levies made up by said defendants on the items aforesaid, and shown in said paragraph, represented and were, in fact, the unexpended and uninvested balances in the hands of the said guardian of payments aforesaid by the U. S. Government, of warrants or checks issued by it for compensation and insurance due by it to the said veteran".

of officials under the state law to impose the tax in 1935 for the preceding years. The present contention is presented by the answer to the first question which was as follows:

"Where a guardian of a World War Veteran receives from the Veterans' Bureau of the United States Government, warrants or checks issued by said Government in payment of adjusted compensation or insurance due the guardian's ward, and said warrants or checks are deposited by the guardian in a depository, collected by it, and the proceeds are credited in the guardian's account carried in such depository, are such deposits subject to taxation by county and municipal authorities"?

The state court answered this question in the affirmative, denying the federal right asserted.

In *Trotter* v. *Tennessee*, *supra*, we considered the provision of section 22 of the World War Veterans' Act, 1924,[5] in relation to investments by the guardian of an incompetent veteran of the moneys received from the Government for compensation and insurance. We held that land purchased by the guardian with such moneys was not exempt. We said: "The statute speaks of 'compensation, insurance, and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the State". *Id.*, pp. 356, 357.

Having no doubt that the moneys payable by the Government to the veteran were exempt until they came into his hands or those of his guardian, we left the question open "whether the exemption remained in force while they continued in those hands or on deposit in a bank". The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be "exempt from all taxation". The Act of 1935[6] is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process "either before or after receipt by the beneficiary". There was added the qualification that the exemption should not extend "to any property purchased in part or wholly out of such payments". This more detailed provision was substituted for that

[5] See Note 1.

[6] See Note 2.

of the earlier Act and was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive.[7]

The state court found no distinction with respect to taxability "between stocks and bonds, and notes and bank deposits and other solvent credits". Amplifying this position, counsel for respondent at this bar, while conceding that the warrants or checks issued by the Government would be exempt, and that if they were cashed the moneys thus received would likewise be exempt until they were invested, contended that if the guardian instead of cashing the warrants or checks deposited them in bank, the resulting bank credits would be taxable. We think that this contention is inadmissible. Congress has declared that the payments of benefits by the Government shall be exempt not only before but "after receipt by the beneficiary". We cannot conceive that it was the intent of Congress that the veteran should lose the benefit of this immunity, which would attach to the moneys in his hands, by depositing the government warrants or checks in bank to be collected and credited in the usual manner. These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof. As the immunity from taxation is continued after the payments are received, the usual methods of receipt must be deemed available so that the amounts paid by the Government may be properly safeguarded and used as the needs of the veteran may require.

The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the *Trotter* case. It is of course true that deposits in bank may be made under a special agreement by which the deposits assume the character of investments and would lose immunity accordingly. No such agreement is shown here. Nor are the bank balances shown to be the proceeds of investments. They are stipulated to be "uninvested balances" of the government payments. Some reference was made at the bar to the possible effect of

[7] See report of the Committee on Finance of the Senate, Sen. Rep. No. 1072, 74th Cong., 1st Sess.

an allowance of interest upon bank deposits. It does not appear that there was such an allowance in this instance and we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach. We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which do not represent or flow from his investments but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use. In order to carry out the intent of the statute, the avails of the government warrants or checks must be deemed exempt until they are expended or invested.

The answer by the state court is broad enough to cover bank deposits of that sort and we consider the ruling in that application to be contrary to the federal statute. The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.